

#### **§ 1303.4**

(b) In the event that use of program funds under this section would result in curtailment of program operations or inability to liquidate prior obligations, the party so affected may apply to the responsible HHS official for payment of these expenses.

(c) The responsible HHS official, upon being satisfied that these expenditures would result in curtailment of program operations or inability to liquidate prior obligations, must make payment therefor to the affected party by way of reimbursement from currently available funds.

#### **§ 1303.4 Remedies.**

The procedures established by subparts B and C of this Part shall not be construed as precluding ACYF from pursuing any other remedies authorized by law.

#### **§ 1303.5 Service of process.**

Whenever documents are required to be filed or served under this part, or notice provided under this part, certified mail shall be used with a return receipt requested. Alternatively, any other system may be used that provides proof of the date of receipt of the documents by the addressee. If this regulation is not complied with, and if a party alleges that it failed to receive documents allegedly sent to it, there will be a rebuttable presumption that the documents or notices were not sent as required by this part, or as alleged by the party that failed to use the required mode of service. The presumption may be rebutted only by a showing supported by a preponderance of evidence that the material was in fact submitted in a timely manner.

#### **§ 1303.6 Successor agencies and officials.**

Wherever reference is made to a particular Federal agency, office, or official it shall be deemed to apply to any other agency, office, or official which subsequently becomes responsible for administration of the program or any portion of it.

#### **45 CFR Ch. XIII (10–1–11 Edition)**

#### **§ 1303.7 Effect of failure to file or serve documents in a timely manner.**

(a) Whenever an appeal is not filed within the time specified in these or related regulations, the potential appellant shall be deemed to have consented to the proposed action and to have waived all rights of appeal.

(b) Whenever a party has failed to file a response or other submission within the time required in these regulations, or by order of an appropriate HHS responsible official, the party shall be deemed to have waived the right to file such response or submission.

(c) A party fails to comply with the requisite deadlines or time frames if it exceeds them by any amount.

(d) The time to file an appeal, response, or other submission may be waived in accordance with § 1303.8 of this part.

#### **§ 1303.8 Waiver of requirements.**

(a) Any procedural requirements required by these regulations may be waived by the responsible HHS official or such waiver requests may be granted by the Departmental Appeals Board in those cases where the Board has jurisdiction. Requests for waivers must be in writing and based on good cause.

(b) Approvals of waivers must be in writing and signed by the responsible HHS official or by the Departmental Appeals Board when it has jurisdiction.

(c) “Good cause” consists of the following:

(1) Litigation dates cannot be changed;

(2) Personal emergencies pertaining to the health of a person involved in and essential to the proceeding or to a member of that person’s immediate family, spouse, parents, or siblings;

(3) The complexity of the case is such that preparation of the necessary documents cannot reasonably be expected to be completed within the standard time frames;

(4) Other matters beyond the control of the party requesting the waiver, such as strikes and natural disasters.

(d) Under no circumstances may “good cause” consist of a failure to meet a deadline due to the oversight of either a party or its representative.